

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

UNITED STATES OF AMERICA PLAINTIFF

VERSUS CRIMINAL NO. 3:03-cr-00068-HTW-LGI-1

CURTIS J. HARDY DEFENDANT

MOTIONS PROCEEDINGS  
BEFORE THE HONORABLE HENRY T. WINGATE,  
UNITED STATES DISTRICT COURT JUDGE,  
JANUARY 23, 2023,  
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE PLAINTIFF: KIMBERLY PURDIE, ESQ.

FOR THE DEFENDANT: PRINCESS ABBY, ESQ.

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3           THE COURT: All right. Good morning.

4           MS. ABBY: Good morning, Your Honor.

5           MS. PURDIE: Good morning, Your Honor.

6           THE COURT: Terri, call the case, please.

7           COURTROOM DEPUTY: Your Honor, this is the United  
8 States versus Curtis Hardy, criminal action number  
9 3:03-cr-68. Appearing by video is Mr. Hardy along with his  
10 counsel, Princess Abby, and representing the Government is  
11 AUSA Kimberly Purdie. Before the Court is the continuation  
12 of the compassionate release hearing.

13          THE COURT: Okay. Thank you.

14          Now, Ms. Abby, it's your motion. So where were we last  
15 time?

16          MS. ABBY: Your Honor, I believe -- we were at the  
17 point for the Government to make its argument, I believe,  
18 and that's if I remember correctly. Nevertheless, I have no  
19 issue with rehashing our argument for the defense if the  
20 Court would -- if the Court would like.

21          THE COURT: Well, do you think you need to?

22          MS. ABBY: I would prefer to, Your Honor, if that's  
23 okay.

24          THE COURT: Then I'll let you do so then.

25          MS. ABBY: So this motion simply comes down to two

1 things essentially, and that's whether or not the Court can  
2 find that there were extraordinary and compelling  
3 circumstances, and our argument is, of course, that there  
4 are those circumstances. They do exist.

5 And due to Mr. Hardy's age, race, medical conditions,  
6 as well as COVID, of course, that's a huge factor within the  
7 extraordinary and compelling circumstances, as well as all  
8 of the issues that COVID brings especially for Mr. Hardy  
9 considering where he is and considering his medical issues.

10 So since there are extraordinary and compelling  
11 circumstances, the Court then goes to Section 3553(a)  
12 factors, the sentencing factors. And --

13 THE COURT: Now, go back to the extraordinary  
14 circumstances. What are they?

15 MS. ABBY: Yes, Your Honor.

16 THE COURT: What are they?

17 MS. ABBY: Well, the extraordinary circumstances would  
18 be Mr. Hardy's -- his age, his race, and his medical  
19 conditions and how all of those things play a huge factor in  
20 COVID, and how it's -- and how with catching COVID that  
21 could possibly lead to very, very dangerous circumstances  
22 for Mr. Hardy.

23 THE COURT: But how do I reach the standard of  
24 extraordinary circumstances? I mean, so these matters you  
25 are giving me are generic, so how do those generic

1 circumstances amount to extraordinary circumstances?

2 MS. ABBY: Specifically when dealing with Mr. Hardy,  
3 that's what makes them extraordinary.

4 THE COURT: Well, what's so extraordinary about it?

5 MS. ABBY: So he suffers with -- and I believe the  
6 medical -- the medical records has been submitted. But  
7 Mr. Hardy suffers with hypertension, diabetes,  
8 hyperlipidemia, as well as some other unspecified issue in  
9 his respiratory system. What makes it extraordinary is  
10 those medical issues combined with his age, combined with  
11 COVID. That's what makes it extraordinary.

12 THE COURT: Well, let's take up each one. So let's go  
13 over the medical conditions. Which one do you want to start  
14 with first? Because then I am going to ask you what is his  
15 status on that particular medical condition. So let's start  
16 off with whichever one you want to, and then tell me then  
17 what is his current situation.

18 MS. ABBY: So I would -- well, before I start off with  
19 the things I have listed, I want to start off with Mr. Hardy  
20 has previously had COVID. He is still suffering with  
21 lingering effects with that. Now --

22 THE COURT: Okay. And since we are on that subject,  
23 how long ago did he have COVID?

24 MS. ABBY: December 2020.

25 THE COURT: And was he hospitalized because of that?

1 MS. ABBY: He wasn't hospitalized. He was placed in a  
2 medical unit for 14 days, and I believe he stayed an  
3 additional 7 days.

4 THE COURT: So he was quarantined?

5 MS. ABBY: Yes.

6 THE COURT: So he was quarantined for 21 days?

7 MS. ABBY: Yes.

8 THE COURT: Okay. And during that time period, what  
9 extraordinary suffering did he have during that time period?

10 MS. ABBY: I would assume all of the things that come  
11 with COVID. But --

12 THE COURT: I don't want to assume. I don't want to  
13 assume, though. So just tell me then when he was  
14 quarantined, did he have to have some special medical  
15 attention, or was he just simply placed in isolation?

16 MS. ABBY: I know -- I know that he had -- he had  
17 issues with his breathing at that time, but as for any  
18 specific details, Mr. Hardy would have to speak at that.

19 THE COURT: And during this 14 days, what kind of  
20 medical treatment did he receive?

21 MS. ABBY: I know he received medicine and some medical  
22 treatment from the medical unit at the -- at the prison, but  
23 I don't believe I can -- or if the Court gives me a moment,  
24 I can try to find a name of the medicine, but I know he  
25 received medicine in medical treatment. And I do believe

1       it's within the medical records that we submitted. What I  
2       am looking at now is the current medicines he takes for his  
3       illnesses.

4               Your Honor, I'm not sure the name of the medicines that  
5       he took. Nevertheless, they treated him for his COVID  
6       symptoms.

7               THE COURT: Was this regular treatment, or is there  
8       something about the treatment that awakened any fears of --  
9       that his life was in danger?

10              MS. ABBY: Mr. Hardy has expressed that he doesn't have  
11       a very strong -- what's the word I'm looking for -- trust  
12       within the medical system itself due to things of the past  
13       with maybe his bloodline or things that his people informed  
14       him about the passing of syphilis to black men, so I know --

15              THE COURT: Now, hold up. Is he talking about -- what  
16       is he talking about? The passing of -- you're not talking  
17       about the Tuskegee Experiment, are you?

18              MS. ABBY: Yes. Yes.

19              THE COURT: That was back in the 40's.

20              MS. ABBY: Right. And so I know that that has caused  
21       Mr. Hardy's distrust within, like, the medical system, so I  
22       want to say that very well puts him at fear right there  
23       between his age him, him knowing that information and  
24       knowing that that happened to black men, and him  
25       experiencing COVID and people dying from COVID. So, yeah,

1       it makes a lot of sense that he would be afraid for his  
2       life.

3               THE COURT: Well, now, he himself was not apart of his  
4       experiment.

5               MS. ABBY: No. I believe what he explained to the  
6       Court last time is that maybe someone -- some family member  
7       far off or someone that his family member knew, but it was  
8       close to him in the past some kind of way.

9               THE COURT: I don't quite understand that. I mean, is  
10      he asserting that that type of conspiratorial conduct on the  
11      part of the Government has continued?

12              MS. ABBY: Honestly, Your Honor, I think we are not  
13      sure. We didn't --

14              THE COURT: I'm talking about what's -- it was found  
15      out a long time ago. This is not a recent development.

16              MS. ABBY: Not recent as to now, but I'm talking about  
17      later from when it was happening, so if it is happening  
18      currently, we wouldn't find out until later.

19              THE COURT: Okay. But so what is he saying now that he  
20      fears as a conspiracy?

21              MS. ABBY: So what I am saying that he is saying is  
22      that because of that, that's the huge reason why, you know,  
23      he didn't get the vaccine. And so that, COVID, his age,  
24      seeing other people catch it, seeing people die from it, a  
25      huge amount of people dying from it, that placed him at fear



1       for his life.

2           THE COURT:   Okay.   And then let's continue with the  
3       other extraordinary ailments that he has.   What are they?

4           MS. ABBY:   One would be hypertension, and there's been  
5       various, various courts to agree that hypertension in and of  
6       itself would warrant release -- compassionate release.  
7       There are different courts that, you know, repeatedly  
8       recognized that COVID-19 presents a heightened risk for  
9       individuals with hypertension, and that is something that  
10      Mr. Hardy suffers with.

11          THE COURT:   Okay.   What does your client know about the  
12      Tuskegee Experiment?   You say he has this fear, so how much  
13      does he know about it?

14          MS. ABBY:   Well, I found out that he knew about it when  
15      he was explaining to the Court at the last hearing.

16          THE COURT:   You didn't know about it?

17          MS. ABBY:   Sir?

18          THE COURT:   You are saying you did not know about it  
19      before that?

20          MS. ABBY:   I knew about it.   I found out that he knew  
21      about it, and that was the basis for his fear.

22          THE COURT:   Okay.

23          MS. ABBY:   Or one of the basis for his fear.

24          THE COURT:   So then you want to relate to me what he  
25      thinks he knows about it?

1 MS. ABBY: I'm not sure what all he thinks he knows  
2 about it, other than it happened to black men here, it was a  
3 secret, just like the basis. If he knows anything in  
4 detail, I wouldn't be -- I wouldn't know.

5 THE COURT: Okay. Well, then, what do you know about  
6 it in detail?

7 MS. ABBY: I know the basis. I know it happened a long  
8 time ago. I know that they were basically lying to young --  
9 young black men, telling them that some type of vaccine or  
10 medicine or something -- and instead they were injecting  
11 them with syphilis using them as guinea pigs to see how  
12 syphilis effects the body instead of actually treating them,  
13 and it went on for a very long time. Instead of getting  
14 better, people got worse.

15 THE COURT: And do you know what the consequences of  
16 syphilis are when it goes untreated?

17 MS. ABBY: I think you can go blind. I know, like,  
18 skin complications. I think it can affect, like, some  
19 internal organs, but as far as specifics, I'm not sure. And  
20 I think I only know that a person can go blind, because Your  
21 Honor stated that the last time we discussed this.

22 THE COURT: Okay. Anything else on this fear of  
23 Government's diversion or conspiratorial conduct that has  
24 caused him to be apprehensive of any Government-sponsored  
25 medicinal plan? Are you saying that he is afraid anything

1       that is sponsored by the Government?

2               MS. ABBY: I wouldn't put it as broad as anything, but  
3       just some apprehensiveness especially when it comes to,  
4       like, accepting the vaccine.

5               THE COURT: Has your client had a polio shot?

6               MS. ABBY: I'm not sure.

7               THE COURT: Okay. Well, go ahead and make your  
8       argument. I'm with you. Continue.

9               MS. ABBY: Okay. So essentially his medical -- all of  
10       his medical conditions, his age, and everything that is  
11       happening with COVID, and his placement, how he is not  
12       really -- he is not in a place where he can essentially  
13       social distance from people to keep himself safe, all of  
14       those things combined together, nothing alone. But all of  
15       these things together equal extraordinary circumstances, and  
16       because that equals extraordinary circumstances, that's what  
17       takes us to the sentence factors.

18              Now, the Supreme Court has ruled that the Court may  
19       consider rehabilitation since his original sentencing,  
20       that's in *Concepcion* and in *Pepper versus the United States*.  
21       So when looking at those factors, we would argue that  
22       Mr. Hardy is warranted for release. He spent ample amount  
23       of time in prison, over 17 years in prison. He is -- he has  
24       been essentially almost a model prisoner, no disciplinary  
25       records. He has received his certificate, and he is a

1 certified paralegal. Of course we spoke a lot about the  
2 Heroism Award that he received. He has a zero or a negative  
3 one for recidivism, and that's according to the BOP. So  
4 when looking at all of these things, Mr. Hardy definitely  
5 should be granted compassionate release.

6 Now, throughout this entire time, it seems as though  
7 the Government's argument has essentially been Mr. Hardy  
8 still poses still sort of danger or danger to the community.  
9 That doesn't prohibit compassionate release especially since  
10 the guideline Section 1B1.13 is what required that, and  
11 that's not binding, and we know that, because we are back  
12 here. That's why the case was remanded in the first place.

13 So not only does their argument fail because a danger  
14 to the community doesn't prohibit compassionate release,  
15 Mr. Hardy simply isn't a danger. As I stated -- for the  
16 same reason I stated, the BOP itself considers him not to be  
17 a danger. It's been years. He has a -- he has a strong  
18 family support system and a strong plan, release plan to be  
19 with his family and to be able to actually social distance  
20 and to have his son help him with things like getting food  
21 or getting his medicine, so Mr. Hardy can stay safe.

22 He's -- because of these things and because he should  
23 be released to be at home or at least placed on some type of  
24 home confinement, he is not going to be a danger to the  
25 community, because he has no plans of being out in the

1 community essentially.

2 Now, of course to say not at all would be a stretch,  
3 but for the most part, Mr. Hardy is looking to be safe. He  
4 is worried about his health and his life, and he is wanting  
5 to be safe. And so that's why we believe that he should be  
6 granted compassionate release.

7 THE COURT: All right. I saw Mr. Hardy raise his hand  
8 a few moments ago as though he wanted to say something. Do  
9 you have a problem with his saying anything?

10 MS. ABBY: No, Your Honor.

11 THE COURT: Mr. Hardy, I saw your hand. Is there  
12 something you want to add?

13 THE DEFENDANT: Basically what I wanted to say to the  
14 Court, Your Honor, at the conclusion of our last hearing, it  
15 was my understanding that the Government has pretty much  
16 closed their case. When she stated to the Court that the --  
17 a request to deny the motion. And I felt as though the  
18 Court should have concluded and allowed the rebuttal to  
19 begin.

20 And I have talked with my attorney, and I was hoping  
21 that we would be able to present the rebuttal today, and  
22 because this case has been going on since approximately one  
23 year, and the remand was given out on February 9th of last  
24 year, 2022. So it was my hope that we would -- the Court  
25 would allow the rebuttal and allow the Court to conclude

1       whatever the Court deem appropriate for this particular  
2       case.

3             Additionally, I wanted to ask my attorney to allow me  
4       to present the rebuttal to the Court.   She --

5             THE COURT:   Well, I said if you have something to say,  
6       you can go ahead and say it.   She said she has no objection  
7       to it.

8             THE DEFENDANT:   Okay.   Okay.   Well, what I would like  
9       to --

10            THE COURT:   And she still is shaking her head saying  
11       she has no objection, so if you have something you want to  
12       say, you can go ahead and say it.

13            THE DEFENDANT:   All right.   Okay, Judge.   Thank you.

14            As the Court is aware, the defendant motion was  
15       submitted pursuant to the First Step Act of 2018.   The very  
16       title of the First Step Act of amendment to 3582 makes plain  
17       what Congress was trying to do or accomplish, and that is  
18       increasing the use and transparency of compassionate release  
19       for federal prisons.

20            The First Step Act eliminated the BOP at the gate  
21       keeper by giving prisons the right to petition the Court  
22       directly and further required the BOP within one year of the  
23       act passing to submit a detailed report to Congress on the  
24       use of compassionate release.   Yet another indication that  
25       Congress intended that more individuals received

1       compassionate release that briefs Senator Cory Booker,  
2       Senator Cardin, Senator Durbin, and Senator Grassley  
3       allowing the passing of the First Step Act as expanding  
4       compassionate release and expediting compassionate release  
5       application.

6             Just to reiterate, Your Honor, much of what has been  
7       presented to this Honorable Court throughout both hearings,  
8       the defense disagrees with the Government assertion of  
9       events as the Government's assertion are without any federal  
10      reason, explanation, or case authority.

11            In a recent ruling by the Supreme Court in *Concepcion*,  
12      *Your Honor, versus United States*, that was a June 27th,  
13      2022, ruling, Your Honor. The Supreme Court held that when  
14      a district court adjudicates a motion for compassionate  
15      release under the First Step Act, the district court may  
16      consider any other intervening changing of the law or  
17      changes of the facts, such as behavior in prison in  
18      determining whether and to what extent to reduce inevitable  
19      Defendant's sentence.

20            First, contrary to the Government's assertion that the  
21      defendant does not meet the extraordinary and compelling  
22      analysis for compassionate release and further assertions of  
23      the Government that the 3553(a) factors does not warrant  
24      release.

25            Okay. To begin with, the Government's first assertion,

1 extraordinary and compelling analysis. This Court may  
2 reduce a sentence if extraordinary and compelling reasons  
3 warrant such a reduction and such a reduction is consistent  
4 with applicable policy statement issued by the Sentencing  
5 Commission. The United States in *United States versus*  
6 *Shkambi*, that would be 993 F.3d 283 as an April 2021 case.  
7 The Fifth Circuit Court of Appeals held that as of now there  
8 is no Sentencing Commission policy statement applicable to a  
9 defendant to file a motion.

10 Therefore, this Court need not conform to the  
11 3582(c)(1)(A) consistency requirement to 1B1.13 in  
12 determining whether there exist an extraordinary and  
13 compelling reason for a sentence reduction. In other words,  
14 it is for this Court alone to determine whether that exist  
15 in extraordinary and compelling reason for a reduction in  
16 sentence in the instant case.

17 Under the extraordinary and compelling analysis and  
18 similar to Defendant case in *United States versus Barbieri*,  
19 that would be 845 Fed. Appendix 911, a 2021 case, the Fifth  
20 Circuit Court of Appeals vacated and remanded holding that  
21 Mr. Barbieri medical condition constitutes extraordinary and  
22 compelling reasons for release, concluding that diabetes,  
23 hypertension, and coronary heart disease are serious medical  
24 conditions, which according to CDC, put Mr. Barbieri at an  
25 increased risk of severe COVID-19 infection.



1           In the instant case, the defendant's medical records  
2       reflect that he, too, suffers with type-two diabetes,  
3       hypertension, hyperlipidemia, esophageal reflux, and  
4       neoplasm of an unspecified behavior of the respiratory  
5       system. These medical conditions of the defendant also meet  
6       the Court of Appeals and as well as the CDC guidance  
7       constituting extraordinary and compelling reasons for  
8       release, additionally putting Mr. Hardy at increased risk of  
9       severe COVID-19 infection. Nonetheless, it meets the  
10      extraordinary and compelling circumstances.

11           The defendant would also like to show this Honorable  
12      Court that in addition to the risk posed by COVID-19, there  
13      are numerous other reasons in the instant case weigh in  
14      favor of extraordinary and compelling reason for release.

15           For example, the defendant term of imprisonment has  
16      been made harsh by the COVID-19 pandemic. Numerous courts  
17      have recognized that the pandemic has made incarceration  
18      harsher and more punitive that would otherwise have been.

19           In addition to harsh conditions, the defendant already  
20      have experienced -- prior to the pandemic, the defendant has  
21      endured for the last two and a half years extended lockdown  
22      where he was confined to his cell for 24 hours a day and  
23      limited to a five-minute shower every three days. He has  
24      not seen his family in over 29 months due to visitor  
25      restriction. While harsh condition and the risk of

1 contracting COVID-19 are insufficient on their own, these  
2 factors weigh in his favor of finding extraordinary and  
3 compelling reasons, in addition, violates the 8th Amendment,  
4 cruel and unusual punishment.

5 Secondly, as stated in Defendant's previous memorandum,  
6 support -- in support of his motion for compassionate  
7 release, this memorandum, Your Honor, was dated August 8th,  
8 2022, submitted by Counsel Abby where she notified the Court  
9 that Defendant is currently seeking medical attention as a  
10 result of suffering lingering effects of COVID-19.

11 Defendant medical records reflect that the defendant  
12 continue to suffer since testing positive for COVID-19.  
13 Particularly, he suffers from the after effect, which  
14 include constant drainage of his nose, heavy breathing, and  
15 constant chest pain. This is in addition to the other  
16 various illness he has making the defendant more susceptible  
17 to the virus.

18 Again, Your Honor, contrary to the Government's first  
19 assertion and based on the above mention, it is clear that  
20 extraordinary and compelling circumstances exist in the  
21 instant case according to the Fifth Circuit Court of  
22 Appeals.

23 Now, secondly, I would like to move to the 3553(a)  
24 factors, Your Honor, in response to the Government's second  
25 assertion that the 3553(a) factor does not warrant relief.

1 The defendant, Mr. Hardy, released following approximately  
2 two decades of imprisonment satisfies the goal of the  
3 sentence and factors stated in 3553(a).

4 Section 3553(a) provides that a sentence should be  
5 sufficient, but not greater than necessary, see *United*  
6 *States versus Sawyer* (phonetically), that would be  
7 (unintelligible) 8928. That's an April 1st, 2022 rule.  
8 Contrary to the Government's assertion, I would now give the  
9 Court an examination of the 3553 factors.

10 The first several factors under 3553 requires  
11 consideration of the nature and circumstances of the offense  
12 along with Defendant's history and characteristics. Both  
13 parties here agree that the defendant's offense was a  
14 serious crime and that there were no injuries at all  
15 involved in the instant case. It is also undisputed that  
16 Defendant's conduct and rehabilitation since the offense  
17 have been exemplary as described throughout all documents  
18 submitted to this Honorable Court.

19 Again, as observed in *Pepper versus United States*, that  
20 would be 562 U.S. 476, a 2011 ruling, stating the Defendant  
21 history and characteristic did not freeze on the day of his  
22 arrest. I repeat, the defendant's history and  
23 characteristics did not freeze on the date of his arrest.  
24 Evidence of post-sentencing rehabilitation may be highly  
25 relevant to several 3553(a) factors. In the instant case,

1 the defendant present date characteristics and  
2 post-sentencing history weighs heavily in favor of release.  
3 Today, the defendant's institutional record will reflect  
4 that Defendant is not the same person who appeared before  
5 this Honorable Court for sentencing two decades ago. As of  
6 April 2nd, 2023, the defendant will be 59 and regrets his  
7 past and is committed to living a law-abiding life.

8 Defendant remorse and rehabilitation are best  
9 demonstrated by his exemplary institutional record over the  
10 last two decades in the Bureau of Prison. With the approval  
11 of the warden of this institution, the defendant works as an  
12 A and O clerk where he work with all newly arrived inmates  
13 to assist them in cleanly navigating their way through the  
14 BOP institution setting demonstrating genuine interest and  
15 intent to abide by all rules and requirements.

16 Additionally, Defendant institution progress report  
17 will reflect that Defendant adjustment in prison has been  
18 that of a model prisoner over the last two decades.

19 During Defendant's incarceration, Defendant has  
20 received over 25 certificates of completion in vocational  
21 and educational program to include, but not limited to, real  
22 estate, legal research, tutor training, parenting, anger  
23 management, drug program, health and fitness, as well as  
24 course of other programs. In continuing his educational  
25 rehabilitation efforts and as an important goal for himself,

1 Defendant is now a graduate of Blackstone Career Institute  
2 where he received, with distinction, his certificate to  
3 become a certified legal assistant paralegal where Defendant  
4 plans upon his release to also endeavor into that field.

5 Over the period of his incarceration, the defendant has  
6 also held numerous work details, maintained good work  
7 performance evaluation, as his committed to self-improvement  
8 is reflected in the BOP progress reports, which highlights  
9 his positive effort with executives there and supervisors  
10 supporting a commitment to personal growth.

11 Defendant -- additionally, Defendant -- for his quick  
12 response, Defendant Hardy received the Heroism Act Award for  
13 saving the life of Lieutenant Kanem (phonetically). The  
14 second part of the 3553(a) factors recognizes the need for  
15 the sentence imposed to reflect the seriousness of the  
16 offense, to promote respect for the law, and to provide just  
17 punishment for the offense. As discussed throughout this  
18 hearing, Defendant, almost two decades in prison, has  
19 already served all of the above (unintelligible),  
20 particularly in comparison to sentence of other convicted of  
21 similar crimes.

22 The third part of 3553(a) recognizes the need for  
23 sentence imposed to protect the public from further crimes  
24 of the defendant.

25 In the instant case, it is undisputed that the

1 defendant has not engaged in a single act of violence since  
2 he was incarcerated. In fact, the Bureau of Prisons  
3 qualifies Defendant general violent risk level as a low and  
4 reports that Defendant does not have a past for violent  
5 offenses.

6 Also, executive staff, Joshua Newcomer, submitted a  
7 character letter on behalf of Defendant describing the  
8 defendant as a productive and compassionate inmate who is  
9 committed to personal growth and serving his community.  
10 Most importantly, in support by the United States Sentencing  
11 Commission report on the effect of aging on recidivism among  
12 federal prison. Based on Defendant's age, spotless  
13 disciplinary record over the last two decades,  
14 rehabilitation efforts, low recidivism level, and strong  
15 family ties, all suggest that Defendant is unlikely to  
16 recidivate.

17 In a recent ruling out of the Southern District of  
18 Mississippi, in *United States versus Spiker* (phonetically),  
19 that would be, Your Honor, U.S. District (unintelligible)  
20 201689. This is a recent 2022 case. The Honorable Judge  
21 Tom Lee also held in *Spiker* that older defendants are less  
22 likely than younger defendants to recidivate following the  
23 release.

24 Moving on to the fourth subpart of 3553(a) addresses  
25 the need for the sentence to provide the defendant with

1       needed education or vocational training in the most  
2       effective manner. The sentence served has already  
3       accomplished this end. The BOP progress report, Your Honor,  
4       shows that Defendant has taken full advantage of the  
5       educational and vocational opportunity offered in the Bureau  
6       of Prisons, including Defendant's certification as a legal  
7       assistant paralegal.

8               Finally, reducing Defendant sentence will achieve the  
9       aim of the fifth subpart of 3553(a), the need to avoid  
10      unwarranted sentencing disparity among defendant with  
11      similar offenses. Defendant has already served a sentence  
12      that is longer than the average time for murder or  
13      manslaughter. The United States Sentencing Commission 2002  
14      source book of the federal sentencing certificate states  
15      that the average federal sentence for murder in physical  
16      year of 2003 was 232 months or slightly over 19 years.

17             Again, contrary to the Government's assertion, this  
18      Court should find that a sentence reduction is consistent  
19      with the sentencing factors set forth in 3553(a). As  
20      submitted to this Court, Defendant has maintained a strong  
21      relationship with his family and has developed a detailed  
22      release plan. Upon his release, Defendant plans to live  
23      with his daughter, Sierra Rogers (phonetically), whose  
24      resident is located in Canton, Mississippi.

25             Additionally, the defendant has secured employment at

1 Bob Boyte Honda in Pearl, Mississippi. Mr. Darren Kelly  
2 (phonetically) manager, can verify Defendant's employment  
3 and can be contacted at 601-502-6580.

4 In closing, Your Honor, Defendant argues that a  
5 reduction of Defendant's sentence would not diminish the  
6 seriousness of the offense, nor would it place the public in  
7 any danger. The extraordinary and compelling circumstances  
8 presented by the defendant significant health condition that  
9 put him at risk of serious illness from COVID-19  
10 reinfection, the lengthy period of incarceration he has  
11 already served, his post-offense rehabilitation, the  
12 disparity created by unduly harsh sentence, and Defendant's  
13 low recidivism level, warrants release.

14 Defendant respectfully ask this Honorable Court to  
15 allow his outstanding institutional record to be a testament  
16 to remorseful upstanding man he has become, as well as a  
17 strong predictor of how he would perform on supervised  
18 release and beyond.

19 More importantly, the defendant respectfully ask this  
20 Honorable Court to evaluate him not as he was on the day of  
21 sentencing, but as he stands before the Court today. I  
22 thank you, Your Honor.

23 THE COURT: And what was the crime of conviction?

24 THE DEFENDANT: It was a bank robbery.

25 THE COURT: And what was the sentence?



1 THE DEFENDANT: The Court sentenced me to 384 months.  
2 I think would have amounted to about 32 years, somewhere in  
3 that range.

4 THE COURT: And the criminal history score was what?

5 THE DEFENDANT: I think it was a VI, Your Honor.

6 THE COURT: And you also mentioned the unduly harsh  
7 sentence?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: What was unduly harsh about your sentence?

10 THE DEFENDANT: Well, in reference to especially the  
11 last two years, in most cases, if any honorable judge would  
12 know that the condition that we had to go through -- for  
13 example, I have been locked down for the last two years,  
14 like, for 24 hours a day. Pretty much we would come out for  
15 -- to eat, or some days we would come out to do your shower.

16 And not only that, they basically just cut me off from  
17 my visitors. I couldn't get my family here to see me, or it  
18 was just -- it just been a terrible ordeal. The food has  
19 been, I mean, ridiculous. Sometimes they just give us  
20 something because they don't have something. It has been a  
21 very horrible idea, Your Honor. Along with COVID  
22 experience, it's just been drastic, and there are several  
23 courts that put that under consideration. Not saying that  
24 that was sufficient on its own to be considered reason for  
25 compassionate release, but we are saying that combined with

1 other circumstances that the defendant had to deal with.

2 THE COURT: So you are not saying that the initial  
3 sentence was unduly harsh?

4 THE DEFENDANT: No, sir. No, sir. No, sir. Not  
5 saying that initial sentence, you know, was unduly harsh at  
6 all, because the Court utilized the applicable -- the law at  
7 the time of the sentencing. Of course I don't agree that,  
8 you know, that I should have got that sentence, but that's  
9 what the law calls for, and I understand that the Court has  
10 to follow the law.

11 THE COURT: And on this bank robbery, did you have a  
12 weapon?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And what kind of weapon did you have?

15 THE DEFENDANT: It was a fake -- toy weapon pretty  
16 much. It wasn't no ammunition in the weapon or anything,  
17 and it's in the report.

18 THE COURT: Was that weapon, if it was a weapon, ever  
19 recovered by the authorities?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Were you arrested at the scene?

22 THE DEFENDANT: Yes, sir -- well, not at the scene.  
23 They came to my house.

24 THE COURT: And at your house, did they recover what  
25 appeared to be a gun?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is that in evidence?

3 THE DEFENDANT: Yes, sir, I think it is.

4 THE COURT: Okay. Now, thank you. Let me go now to  
5 the prosecution.

6 MS. PURDIE: Good morning, Your Honor.

7 THE COURT: Good morning. Okay. Your response if you  
8 have one?

9 MS. PURDIE: Well, Your Honor, while it is fresh on my  
10 mind, according to the PCR (sic) -- or the PSR, I  
11 apologize -- the gun was a semi-automatic 25-caliber  
12 handgun, so it was not a toy weapon that was used. It was a  
13 -- I don't know whether or not it was loaded, but it wasn't  
14 a toy, and it was pointed teller's head during the course of  
15 the robbery.

16 THE COURT: How many people participated in the  
17 robbery?

18 MS. PURDIE: I believe it was just the defendant, Your  
19 Honor. I don't believe he had a codefendant according to  
20 the PSR.

21 THE COURT: Was the gun loaded?

22 MS. PURDIE: It does not say in the PSR whether the gun  
23 was loaded, Your Honor.

24 THE COURT: What about in a section on forfeiture? Did  
25 the Government seek to forfeit the weapon and any

1       ammunition?

2               MS. PURDIE:  Let's see, Your Honor -- Your Honor, due  
3       to the age of the case, I'm not able to pull that up on ECF.  
4       I'm not sure if the original indictment is available in this  
5       file.

6               THE COURT:  Well, does the indictment contain a  
7       forfeiture provision?

8               MS. PURDIE:  I'm trying to locate a copy of the  
9       indictment, Your Honor.

10              THE COURT:  Okay.

11              MS. PURDIE:  Let's see -- here it is.  That's not it.

12              (Discussion off the record.)

13              MS. PURDIE:  Your Honor, I am sure it is available  
14       somewhere in this file, but it is so much.

15              THE COURT:  Okay.  I'll go back through my file.  I  
16       didn't bring it into the courtroom.

17              MS. PURDIE:  And I can't access the indictment on ECF  
18       due to the age of the case.  So...

19              THE COURT:  I'll have all of that in my file.

20              MS. PURDIE:  Okay.  I apologize.

21              THE COURT:  It's okay.

22              Mr. Hardy, the prosecutor qualms with your statement  
23       that that was toy gun.  Are you still contending it was a  
24       toy gun?

25              THE DEFENDANT:  Say it again, Your Honor.

1           THE COURT: Are you -- I said that the prosecutor  
2 disagrees with your statement that at that time of the  
3 robbery you had a toy gun. So --

4           THE DEFENDANT: Your Honor --

5           THE COURT: -- are you still saying you had a toy gun  
6 and not a real gun?

7           THE DEFENDANT: Your Honor, let me reiterate that a  
8 little bit, please, sir. My reference to a toy gun was  
9 because the gun could not shoot. It could not shoot, and it  
10 had no -- no ammunition in the gun. You couldn't even  
11 really pull the trigger on the gun. That was -- that was  
12 why I was referring to it, because it was no way that the  
13 gun could fire at all.

14          THE COURT: Now, there's a difference between a toy gun  
15 and a gun that is inoperable. So which one are you saying  
16 here?

17          THE DEFENDANT: Well, I apologize. I apologize. Let's  
18 turn that to a gun that was inoperable. I apologize. I  
19 used the basic street terminology in describing that, and I  
20 apologize and --

21          THE COURT: Why are you saying that it was inoperable?

22          THE DEFENDANT: Because it had been kept around at the  
23 residence for quite a while, and my uncle and a couple other  
24 people has tried to use it -- tried to use it for --  
25 exactly, I think, one -- New Years Day, they tried to use

1       it, and it wouldn't do anything. And actually, he just left  
2       it there. And --

3               THE COURT: So then what made the gun inoperable?

4               THE DEFENDANT: Well, what I do -- I don't really know  
5       that much about guns, but what I do know about that  
6       particular gun, Your Honor, was that it could not fire.  
7       That's all I knew about it.

8               THE COURT: Were there bullets in the chamber?

9               THE DEFENDANT: No, sir.

10              THE COURT: Did the Government recover any bullets?

11              THE DEFENDANT: Not that I know of, Your Honor. They  
12       shouldn't of, because I don't think there were any there.  
13       They took the gun out of the drawer where it was kept at,  
14       and I don't think -- in recalling back, it couldn't have  
15       been no bullets in there, because we know -- everybody in  
16       the house knew it couldn't fire.

17              THE COURT: But you are saying that's the gun you  
18       carried to the bank?

19              THE DEFENDANT: Yes, sir.

20              THE COURT: And I'll look back at the PSR on these  
21       matters. But what was the name of the bank?

22              THE DEFENDANT: Sir?

23              THE COURT: What was the name of the bank?

24              THE DEFENDANT: I don't even know.

25              MS. ABBY: Your Honor, if I may, it was Union Planters

1 Bank.

2 THE COURT: Union Planters?

3 MS. ABBY: Yes.

4 THE COURT: All right. And counsel, do you agree with  
5 your client that this gun was inoperable?

6 MS. ABBY: I have no information on that. Of course, I  
7 wasn't representing him at that time, and the PSR that I'm  
8 looking at it, it has no information about whether or not  
9 the gun was operable or not. But it also lacks information  
10 about any ammunition.

11 THE COURT: Mr. Hardy, was the bank protected by an  
12 armed guard?

13 THE DEFENDANT: Can you repeat that, Your Honor?

14 THE COURT: Was the bank at the time of the robbery  
15 protected by an armed guard?

16 THE DEFENDANT: I would have to say no, Your Honor.  
17 Because I never -- it was no information that came up on  
18 that particular issue. None was in my PSI (sic). None was  
19 in my progress report.

20 THE COURT: I don't quite understand your answer. You  
21 were at the bank.

22 THE DEFENDANT: What I am saying is that there was no  
23 security guard at the bank. If that answer your question.

24 THE COURT: Well, if you are saying that you didn't see  
25 one -- are you saying you did not see a security guard?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you saying that you knew for a fact  
3 that the bank was not guarded by a security guard?

4 THE DEFENDANT: No, sir, I am not saying that. What I  
5 am saying is, in reading the reports of the investigating  
6 officers, there was no information that I can recall about a  
7 security guard. And reading my discovery packets, there was  
8 no information that I can recall that mentioned about a  
9 security guard. And --

10 THE COURT: I ask this question especially on cases of  
11 robbery of institutions where the victim institution might  
12 have been guarded by a security -- armed security guard, and  
13 the question that I ask and have asked and especially ask  
14 when I prosecuted on these matters, is whether the defendant  
15 upon entering the bank with what appeared to be an  
16 inoperable firearm -- or for that matter, where the robber  
17 entered a bank knowing that the bank was protected by an  
18 armed guard, whether the robber was prepared to commit  
19 suicide.

20 In a sense that when robbers enter into a bank  
21 protected by an armed guard, they certainly recognize the  
22 possibility that the armed guard is going to observe them  
23 with what appears to be a usable firearm, and the security  
24 guard might open fire. I ask the same question when a  
25 defendant says that he entered a bank with an inoperable gun



1       that the any observer would appear to be an operable gun and  
2       where that bank robber would be taking a chance that the  
3       armed guard would open fire.

4             In a number of instances where I have broached this  
5       subject at the prisons that I have visited, and where I have  
6       talked to robbers who went into a bank with a weapon, I have  
7       asked whether the gun was operable or inoperable.

8             And first of all, in the instances where the gun was  
9       operable, I ask the bank robbers did they intend -- upon  
10      their request for money at the bank, intend to commit  
11      suicide, because if the guard pulled out his weapon and  
12      started firing, then the bank robber could get killed. And  
13      so I ask them what do they intend to do especially when they  
14      had a gun that was operable. The answers I have gotten on  
15      many occasion is that the bank robber said they would have  
16      shot back, because they did not intend to commit suicide,  
17      that is they didn't intend to walk into a hail of gun fire.  
18      They wanted to live. So then I said, so then you were to  
19      prepared to kill the guard, and the answer was yes. And I  
20      asked them to justify that. Several -- well, more than  
21      several, a number said that if they killed the guard, it was  
22      not their fault. And I asked why not, because they were the  
23      ones in the bank trying to rob the place, and the guard had  
24      a duty to protect it.

25             The prisoners in this vein responded that the guard

1 would be responsible for his own injury if he suffered  
2 injury or death, because as they put it, they already had  
3 their guns out, and the guards should not have sought to  
4 pull his gun. And I says, but he had a duty, so what was  
5 wrong with him trying to protect the bank and his assets?  
6 And their response was, he shouldn't have of, because they  
7 had their guns out, and if he pulled his gun out while they  
8 had their guns out, then any injury to him was his own fault  
9 and not theirs.

10 I have unfortunately heard that a number of times,  
11 because I have visited a number of penitentiaries, and I  
12 have asked this to a number of so-called bank robbers who  
13 have gone into a bank with either a real gun or a supposedly  
14 inoperable gun, and the answers have always been troubling.

15 So in your case, what you are telling me is that you  
16 went into a bank, and seemingly what you're saying is that  
17 you had not scouted the bank beforehand, and thus, you  
18 weren't completely sure that the bank was not protected by  
19 an armed guard. But nevertheless, you went into a bank with  
20 a weapon that looked genuine, and I ask then were you  
21 prepared to die, because if so, if an armed guard was there  
22 and pulled his weapon, then you are telling me that you were  
23 prepared to die if a guard then pulled his weapon on you.  
24 That would defeat the purpose of robbing the bank and making  
25 an escape.

1           And so I'm troubled when I hear that someone went into  
2           a bank with a notion of robbing the bank with an inoperable  
3           gun or even a realistically looking toy gun. That's why I  
4           asked the question. But I'll look back through my materials  
5           on this case and see if there is any question about whether  
6           the gun was loaded, unloaded, et cetera, but I am concerned  
7           that you described it as a toy gun. And I would like to  
8           know why the gun was inoperable. You said it wouldn't fire.

9           Well, I'll look through the records and see if the gun  
10          was ever confiscated and whether any one from the Government  
11          ever tested the gun. But let's move on from there. That  
12          was a long time ago. Personally 17 years ago; is that  
13          correct?

14          THE DEFENDANT: No, sir, Your Honor.

15          THE COURT: It's longer than 17?

16          THE DEFENDANT: Yes, sir.

17          THE COURT: You said that you have been incarcerated  
18          almost two decades; is that correct?

19          THE DEFENDANT: Yes, sir. Yes, sir, Your Honor.

20          THE COURT: That will make it 20 years?

21          THE DEFENDANT: Yes, sir, Your Honor.

22          THE COURT: So then you been there longer than  
23          17 years?

24          THE DEFENDANT: Yes, sir, Your Honor.

25          THE COURT: So what was the date you were initially

1 confined?

2 THE DEFENDANT: April 3rd, 2023 -- 2003, Your Honor.

3 THE COURT: 2003?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: Okay. Now, I turn to the prosecution. I  
6 gave Mr. Hardy an opportunity to state any materials he  
7 wanted to state over and beyond what his lawyer said, and  
8 let me hear from you.

9 MS. PURDIE: Yes, Your Honor. Can you hear me?

10 THE COURT: I can.

11 MS. PURDIE: Okay. First of all, I'd like to address  
12 the letter that was written by the defendant to Your Honor  
13 back in December.

14 THE COURT: Okay.

15 MS. PURDIE: In that letter, he characterized the  
16 Government as having made numerous successful attempts at  
17 prolonging this hearing, and I take issue with that, because  
18 I have done no such thing. I am very interested in  
19 resolving this matter once and for all. I can't speak to  
20 what took place before I inherited the case from the prior  
21 AUSA who is no longer with the office, but I can address the  
22 defendant's statement that the Government stated in December  
23 that it was unavailable to attend or continue the hearing.  
24 That is untrue. We have made several attempts to reschedule  
25 the hearing since it concluded, and I have provided my

1       availability on all of those occasions. And most recently,  
2       Ms. Barnes asked if the parties were available on  
3       January 10th to set this matter. I simply stated that I was  
4       going to be South Carolina for training, and, I have been  
5       and remain available to continue the hearing, so I just  
6       wanted to rebut that criticism and mischaracterization that  
7       was made in that letter regarding the Government.

8               Having said that, I do believe this can be resolved  
9       quickly. It is the defendant's burden to demonstrate that  
10      he is eligible for compassionate release. The bottom line  
11      is that the defendant has to demonstrate extraordinary and  
12      compelling reasons for his release, and he has not done  
13      that.

14             First of all, chronic conditions that can be managed in  
15      prison are not a sufficient basis for compassionate release.  
16      The hypertension is not considered extraordinary and  
17      compelling. It can be managed in prison. He is 58 almost  
18      59 years old. His ailments are ordinary for his age. His  
19      medical records show noncompliance with other medical  
20      treatment and regimen, such as him failing to take medicine  
21      and follow dietary protocols. And I understand there are  
22      some issues with the diet in prison now that may impact  
23      that. Nevertheless, he has not demonstrated that these are  
24      extraordinary and compelling reasons for release.

25             Furthermore, his efforts at rehabilitation are only

1 relevant if he can demonstrate those extraordinary and  
2 compelling reasons, which, again, he has not shown. His  
3 active Heroism Award, while admirable, he has already been  
4 awarded for that in accordance with BOP policy. It was not  
5 extraordinary. There is nothing extraordinary and  
6 compelling about that alone.

7 And regarding COVID, as of today, there are no positive  
8 inmates and no positive staff members at FCI Allenwood  
9 Medium Facility. There have been no death and no -- that's  
10 no inmate deaths and no staff deaths at the facility, so his  
11 risk of exposure to COVID appears to be minimum.

12 I would direct the Court to the *Thompson* and -- let's  
13 see -- what was it, *Thompson* and *Dupre* cases, I believe. I  
14 submitted those to this Court via email back on  
15 November 14th. And *Thompson* is a Fifth Circuit decision,  
16 and it says that the courts that granted compassionate  
17 release on the basis of medical reasons have done so largely  
18 for defendants who have already served the lion share of  
19 their sentences and presented multiple severe health  
20 concerns. Some of those concerns cited in the footnote are  
21 -- and it cites those cases where those defendants were  
22 released on home incarceration, or their sentences were  
23 reduced. One of them, an inmate had served 17 years and  
24 only had a year and a half left to go, and he was suffering  
25 from diabetes, hypertension, and liver abnormalities.

1           Another one, the defendant had served over 80 percent  
2           of his reduced sentence and suffered from end-stage renal  
3           disease, diabetes, and hypertension.

4           So, Your Honor, the extraordinary and compelling  
5           circumstances have not been shown. But even if they had  
6           been shown, the Court has to then consider the 3553(a)  
7           factors.

8           And in this case, the nature and circumstances of the  
9           offense and the history and characteristics of the  
10          defendant, which is one of the first factors the Court has  
11          to consider, the defendant committed a bank robbery, which  
12          as you know, is a crime of violence. He brandished a  
13          firearm and pointed it at the teller. This was not his  
14          first offense. He was career offender and was on supervised  
15          release at the time he committed this offense. His crimes  
16          date all the way back to 1984. He had four parole  
17          violations over a nine-year period. One of those crimes was  
18          assaulting a Texas State Trooper. His criminal history  
19          category was VI at the time of sentencing. And while I  
20          agree with the defendant that the history and  
21          characteristics of the defendant do not stop at the time of  
22          sentencing, you have to look at all of the history and  
23          characteristics of the defendant. I don't believe his  
24          current circumstances outweigh that past conduct, Your  
25          Honor.

1           The second factor is the need for the sentence imposed  
2       to reflect the seriousness of the offense, to promote  
3       respect for the law, to provide just punishment for the  
4       offense, to afford adequate deterrence to criminal conduct,  
5       protect the public from further crimes, and provide the  
6       defendant with needed educational or vocational training, et  
7       cetera.

8           To allow release at this time, absent compelling  
9       circumstances would depreciate the seriousness of this  
10      offense. The guideline range in this case was 360 months to  
11      life. The Court sentenced the defendant on the low-end of  
12      the guideline range at 384 months, and to reduce that  
13      sentence when much time is still left to serve, would  
14      depreciate the seriousness of those crimes.

15          The defendant has not demonstrated that the 3553(a)  
16      factors warrant release, so his motion should be denied.  
17      And that's all I have, Your Honor.

18          THE COURT: All right. Let me go back to the  
19      defendant, and touch on a matter that has not been touched  
20      on, at least with him. The defense counsel mentioned that  
21      this defendant has some concerns about the Tuskegee  
22      Experiment. And the prosecutor mentioned that this  
23      defendant has not been taking his medications. Is that what  
24      you said, Ms. Purdie?

25          MS. PURDIE: Yes, Your Honor. If I recall, there were



1       some indication in the medical record that he had been  
2       reminded by medical staff to take his medications, and they  
3       had strongly urged him to take both the flu and COVID  
4       vaccines, which he did not take, which is his right not to  
5       take those. He is not obligated to take those, but I do  
6       think it is inconsistent for him to claim fear of risk of  
7       contracting the virus while, you know, also refusing the  
8       treatment that would drastically reduce that risk. I also  
9       understand his concern regarding the Tuskegee incident as it  
10      relates to vaccinations.

11           THE COURT: I'll let either the defense counsel or  
12      Mr. Hardy respond if either or both wish to do so.

13           MS. ABBY: To respond in particular with the refusal of  
14      the vaccine and medicine?

15           THE COURT: Is he refusing?

16           MS. ABBY: I will let Mr. Hardy speak to that.

17           THE COURT: Mr. Hardy?

18           THE DEFENDANT: Thank you. Thank you, Your Honor. As  
19      we demonstrated to the Court at the very last hearing, based  
20      on the Tuskegee University syphilis study that my mom -- as  
21      I told you last time, we lost a relative, Melvin, due to the  
22      fact that he got caught up in the Tuskegee Experiment. And  
23      so from that point, my mom, she didn't have the faith in us  
24      taking vaccinations for basically anything for the most  
25      part. That was one of the reasons why she didn't take us to

1 the doctor and kinda sort of why I don't take the flu shot  
2 and all of these other vaccines, because I -- for one  
3 reason, I promised her that I would never do it, because I  
4 could see the hurt and anxiety in her face when she  
5 described the circumstances with Uncle Melvin. And so I  
6 promised her that I wouldn't end up in the same way, and I  
7 been trying to keep my promise to her, you know, because --

8 In addition to that, you know, just yesterday I saw a  
9 little girl, 18 years old, took the COVID vaccination, and  
10 now she is -- she don't even know where she is at. She is  
11 dis-minded. She is just laying there. And so I almost  
12 cried when I saw it, and I was, like, wow, why -- why didn't  
13 somebody know that? Why didn't somebody know and do  
14 something about that? And it kind of hurt me, you know,  
15 because I know she was a little girl about 18 years old. So  
16 I was, like, wow.

17 You know, it actually began when Colin Powell died. I  
18 begin to get skepticism about it, right? You know, me  
19 wanting to do it and me thinking about my mom, it was just  
20 so much going back and forth, back and forth. And then when  
21 I got COVID I said, well, Lord if it's time for me to die,  
22 then it so be. And with that situation, I'm a little  
23 skeptical with that.

24 THE COURT: Okay.

25 THE DEFENDANT: I can no longer do it.

1 THE COURT: Okay. And then on the polio shot that I  
2 asked your lawyer about, did you ever take that?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay. And flu shots, you said you don't  
5 take flu shots?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. Anything else you want to add?

8 THE DEFENDANT: Me?

9 THE COURT: Yes.

10 THE DEFENDANT: Your Honor, I would just like to say  
11 that what happened 20 years ago, I know the Court can't  
12 undue what happened. But as I told you earlier, I filed my  
13 motion under the First Step Act, compassionate release,  
14 because it gave me an opportunity to present to the Court  
15 the person that I am today. That I have changed -- you  
16 know, the person that I have changed to be today.

17 I didn't just start my rehabilitation to make a change  
18 when the First Step Act came into play in 2018. The very  
19 day that you sentenced me and I made it to the Bureau of  
20 Prisons, I went straight to the counselor, and I asked the  
21 counselor, I said, I need some help to challenge my drug  
22 addiction. And as you can see in my report, she put me in  
23 the program, and I took the program, because I know -- I  
24 knew that I wanted to change my life, and that program  
25 helped me a lot. I mean, a lot. It changed my life.

1           So when that occurred and then I went on and I saved  
2       Lieutenant Kanem's life, and I was, like, I can save  
3       somebody life. I can do something different. And that's  
4       been my attitude over the 20 years that I have been  
5       incarcerated.

6           It's very rare that you will see an individual in the  
7       Bureau of Prison with no single incident report, because  
8       this is the world that a lot of you might not know, and it's  
9       not easy in this world, the Bureau of Prisons world. So to  
10      not to have an incident report, you have got to do some  
11      strange things to stay away from all sorts of incidents,  
12      because they are going to come at you. You don't have to go  
13      to them. They will come at you. So I bent over backwards  
14      for the last 20 years to make sure that I can be a guide for  
15      the next man or a mentor for the next man. That's my  
16      strategy to help someone help themselves. I begin this,  
17      like I said, way before 2018, because I know that the person  
18      that I wanted to be for my kids. And this is not the 20  
19      years that I am locked in. It will be for the next 20 years  
20      when I am out in society to do the same thing.

21           It's a different task to get away from the person that  
22      who you are. And regardless of whatever the Court decision  
23      might be, my intent -- I would not sway away from the path  
24      that I am on, and that's the path of rehabilitation, because  
25      that is what the Federal Bureau of Prisons is here for, to

1 change a person from who he was to show him a way that he  
2 can become, someone who he want to be. And that's my whole  
3 -- that's been my action from back in 2003 when I went and  
4 signed up with my counselor to take the RDAP Program to make  
5 sure that I changed my life.

6 And, again, that's why I say you won't find an  
7 individual hardly in the Bureau of Prison not with one --  
8 not with any single incident report, because it takes  
9 something to avoid that. And so that's been what I have  
10 been doing for the last 20 years, and that's what I am  
11 continuing -- plan to continue to do, because I know now  
12 that I can help somebody rather than hurt somebody.

13 You know, back in the day, I did not know that I could  
14 really help somebody, because I saw myself as a person who  
15 just out in the street. You mentioned about the bank  
16 robbery that a guy was to shoot out with the officer, as I  
17 demonstrated and told the Court, that I don't know much  
18 about weapons. So I'm the type of guy that if I had saw a  
19 security guard, he would have to catch me, because I would  
20 be running as fast as fast can go. The minute I saw a  
21 security guard, I would be gone. That's the type of person  
22 I am. I don't want no conflict with any security officer.  
23 You know, so just trying to explain to the Court the person  
24 that I am today and that's why I ask the Court to not to  
25 view me as the person I was at sentencing, but the person

1       that stands before the Court today.

2               Throughout the Bureau of Prison, all the executive  
3       staff, counselors, they call for me, because they know that  
4       I am a reliable person. And they trust me, because they  
5       know that I am going to get the job done, that I am going do  
6       whatever it takes to -- to make sure everything is going in  
7       the right direction.

8               And again, like I say, that's what I do. That's what I  
9       continue to do. And I hope that the Court see my motion as  
10      a motion filed under the First Step Act and the changes that  
11      Senator Cory Booker, Senator Durbin, Senator Grassley, tried  
12      to bring forth for people like me.

13              Thank you, Your Honor.

14              THE COURT: Did you talk to the warden about your  
15      interest in being released under COVID?

16              THE DEFENDANT: No. I didn't talk to the warden  
17      personally, because they -- it's been a -- they been -- the  
18      warden here today is not here tomorrow, so what we have got  
19      -- what they did send me back, right, they denied the motion  
20      because -- not because of nothing really under the First  
21      Step Act, because at the Bureau of Prison, they wasn't  
22      allowed to give guys here at a meeting facility the release,  
23      because they specifically told us, you can file to the  
24      Court, and we prefer you to file to the Court, because the  
25      Court got authority to give you the release that you

1       deserve.

2               THE COURT: Now, on this hero -- go ahead and finish  
3 your statement. What were you about to say?

4               THE DEFENDANT: Yeah. Any of the staff here, you know,  
5 at your request, you can speak with any of them, and they  
6 will tell you exactly what I just explained to the Court.

7               THE COURT: Do you have any title there at the  
8 penitentiary?

9               THE DEFENDANT: Well, right now I am just considered  
10 the number one orderly.

11              THE COURT: The number one what?

12              THE DEFENDANT: Orderly. A and O clerk orderly.

13              THE COURT: Orderly?

14              THE DEFENDANT: Yes, sir.

15              THE COURT: And is that some kind of description that  
16 the penitentiary provides?

17              THE DEFENDANT: Yes, sir. It's a -- it's a trusted  
18 position where the -- everyone can't get it. Everyone can't  
19 get it.

20              THE COURT: What do you have to do to get it?

21              THE DEFENDANT: Well, you have to show the counselor  
22 that you are willing to abide by all of the rules and  
23 regulations and set an example for other inmates as to what  
24 they are supposed to do in order to try to keep a lot of  
25 chaos from going amongst prisoners and someone getting hurt.

1 My counselor, Mr. J. Newcomer, he sent you a --

2 THE COURT: What's your counselor's name?

3 THE DEFENDANT: Joshua Newcomer.

4 THE COURT: Newcomer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. And what does he say?

7 THE DEFENDANT: He sent you a character letter  
8 explaining my job detail, basically that he needs a person  
9 of trust that -- to be in this position. And that he  
10 explained, I think, on the letter about how I coordinate all  
11 of the programs in the unit, and that he believes -- if the  
12 Court would ask him, he believes that I should be given  
13 release, because he knows how I will work in the community.

14 THE COURT: Okay. Now, I want to ask you one last  
15 question about the Heroism Award.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: We have gone over the details of it. But  
18 were you ever publicly honored for that award there at the  
19 penitentiary?

20 THE DEFENDANT: Publically --

21 THE COURT: Did they do a public ceremony there at the  
22 penitentiary for you?

23 THE DEFENDANT: No. What occurred -- I don't know if  
24 it's --

25 THE COURT: I know they sent you a letter. I know they



1 sent you a letter, and I know they also made a monetary  
2 contribution to you. But did they actually provide a  
3 tribute to you in front of the other prisoners?

4 THE DEFENDANT: No, sir. If I may, I'll explain  
5 exactly what occurred.

6 THE COURT: Okay.

7 THE DEFENDANT: I just happened to be at work and --

8 THE COURT: I know what happened. Now, I know what  
9 happened.

10 THE DEFENDANT: Yeah. That's not --

11 THE COURT: But what I'm asking you is, after that, did  
12 they have any ceremony where they publicly acknowledged what  
13 you had done?

14 THE DEFENDANT: The warden, the captain, and I think it  
15 was the case manager coordinator, they all met in my  
16 supervisor's office, and the supervisor called me up, and  
17 they say that someone wants to see you. And I said huh? He  
18 said yes, we got someone who want to see you. Come  
19 upstairs. So the warden and the what's it called gave me  
20 that award, and I shook all of them hands and that was the  
21 subject of that particular service.

22 THE COURT: Last question for you. Last quick  
23 question.

24 THE DEFENDANT: Yes sir.

25 THE COURT: Did any inmates at the institution -- did

1 any inmates at the -- tell the guards that I am talking, and  
2 tell them my court reporter can't hear with them talking.  
3 Who are you talking to?

4 THE DEFENDANT: That's one of the union managers, Your  
5 Honor.

6 THE COURT: What's his name, please?

7 THE DEFENDANT: Mr. Arnold.

8 THE COURT: Okay. Just tell him I need to finish up my  
9 question.

10 All right. Now, back to you right quick. Did any  
11 inmates show any anger towards you?

12 THE DEFENDANT: Yeah. They was -- somewhat. Some of  
13 them didn't like the -- they didn't like the action that I  
14 took. They didn't like the action that I took. And I was  
15 -- they was kind of skeptical for a minute, and I didn't  
16 really know what was going to happen, Your Honor. I stuck  
17 to what I was, the person that I was. I said that was the  
18 right thing to do, and I went with it.

19 THE COURT: Did anybody threaten you?

20 THE DEFENDANT: Yeah. They was sending semi-threats,  
21 like, you helping the police and --

22 THE COURT: Was any of this in writing?

23 THE DEFENDANT: No, sir.

24 THE COURT: Just what they said to you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Thank you very much.

4 Now, I am going to render a written opinion by -- let  
5 me see -- today is Monday, by next Monday, and I'll have an  
6 opinion out on this.

7 Anything else, Ms. Abby?

8 MS. ABBY: Just that we stand by our arguments made  
9 beforehand and that we agree that -- we disagree with  
10 (background conversations) that Mr. Hardy has (background  
11 conversations) manage his (background conversations) when  
12 coping with COVID.

13 THE COURT: Okay.

14 MS. ABBY: Other than that, Your Honor, that's all.

15 THE COURT: Okay. You are standing by what you stated  
16 earlier?

17 MS. ABBY: Yes, Your Honor.

18 THE COURT: Okay, then. Anything else from the  
19 prosecution?

20 MS. PURDIE: Your Honor, I, again, would just say, you  
21 know, while I do applaud and find the defendant's actions  
22 admirable -- (background conversations) awards and  
23 combinations, rehabilitation, are admirable, and I applaud  
24 that, he is not asking you to consider only the person that  
25 he is now and not who he was before, he is asking you to

1 ignore the law. You have to consider the nature and  
2 circumstances of the offense and the history and  
3 characteristics of the defendant.

4 And before you can even get to that point, you have to  
5 determine there are extraordinary and compelling reasons.  
6 And I don't think that either of those things can be done in  
7 this case.

8 THE COURT: All right. Thank you very much.

9 All right. All of you, thank you. I will have the  
10 opinion out before next Monday. All right. We are signing  
11 off. Thank you now.

12 MS. PURDIE: Thank you.

13 THE DEFENDANT: Thank you very much, Your Honor.

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**COURT REPORTER'S CERTIFICATE**

I, Caroline Morgan, Official Court Reporter for the United States District Court for the Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the forenamed case at the time and place indicated, which proceedings were stenographically reported by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS, the 12th day of May, 2023.

/s/ Caroline Morgan, CCR

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